

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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COBBLE HILL HEALTH CENTER, INC.

Plaintiff,

10-CV-3834
(JBW)(CLP)

- against -

SAFECO INSURANCE COMPANY OF AMERICA

THIRD PARTY
COMPLAINT

Defendant,

----- X
SAFECO INSURANCE COMPANY OF AMERICA

Third-Party Plaintiff,

-against-

CAULDWELL WINGATE COMPANY, LLC,
CAULDWELL WINGATE COMPANY, INC.,
CAULDWELL WINGATE HOLDING COMPANY,
INC., and THE GREGORY STAHL TRUST

Third-Party Defendants.

----- X

Defendant Safeco Insurance Company of America ("Safeco"), by its respective undersigned attorneys, Torre, Lentz, Gamell, Gary & Rittmaster, LLP, for its third-party complaint against Cauldwell Wingate Co., LLC ("Cauldwell LLC"), Cauldwell Wingate Co., Inc. ("Cauldwell Inc."), Cauldwell Wingate Holding Company, Inc. ("Cauldwell Holding") and the Gregory Stahl Trust, alleges as follows:

Nature Of This Third-Party Action

1. The plaintiff, Cobble Hill Health Center, Inc. ("Cobble Hill"), has commenced suit seeking recovery under a certain performance bond issued by Safeco, as

surety, and Cauldwell LLC, as principal. Safeco has denied liability to Cobble Hill. However, in the event Cobble Hill recovers judgment against Safeco, then Safeco is entitled to judgment over against (1) Cauldwell LLC pursuant to common law, and (2) Cauldwell LLC and the other third-party defendants pursuant to contractual indemnity.

Jurisdiction And Venue

2. This court has subject matter jurisdiction over this third-party complaint by reason of 28 USC § 1367(a) (“Supplemental Jurisdiction”).

The Parties

3. Safeco is a Washington Insurance Company with its principal place of business located in a State other than New York.

4. Plaintiff Cobble Hill alleges that it is a New York not-for-profit corporation with its principal place of business located in New York.

5. Upon information and belief, third-party defendant Cauldwell LLC is a limited liability company duly organized and existing under the laws of the State of New York with its principal place of business located in New York.

6. Upon information and belief, third-party defendant Cauldwell Inc. is a corporation duly organized and existing under the laws of the State of New York with its principal place of business located in New York.

7. Upon information and belief, third-party defendant Cauldwell Holding is a corporation duly organized and existing under the laws of the State of New York with its principal place of business located in New York.

8. Upon information and belief, third-party defendant the Gregory Stahl Trust

is a valid trust existing under the laws of the State of New York.

Background Facts

9. Safeco, as surety, and Cauldwell LLC, as principal, issued Performance Bond No. 6553306, dated July 9, 2008 (the “Performance Bond”), in favor of Cobble Hill, as Owner, in connection with Cauldwell LLC’s contract with Cobble Hill for the construction of a certain building at 822 Lexington Avenue, Brooklyn, New York (“the Project”).

10. On or about January 23, 2007, Cauldwell LLC, Cauldwell Inc., Cauldwell Holding, and the Gregory Stahl Trust and each of them, executed a General Agreement of Indemnity for Contractors (“the Indemnity Agreement”), a copy of which is annexed hereto as Exhibit A.

11. On or about August 19, 2010, Cobble Hill filed a complaint against Safeco alleging that Cauldwell LLC was in default of its obligations with respect to the Project and that Safeco was in default of its obligations under the Performance Bond. Cobble Hill seeks recovery of damages to be at least \$500,000, and punitive damages in an amount to be proven at trial, from Safeco. A copy of Cobble Hill’s complaint is annexed hereto as Exhibit B.

12. A copy of Safeco’s answer to Cobble Hill’s complaint is annexed hereto as Exhibit C.

FIRST CLAIM AS AGAINST
CAULDWELL LLC

13. Safeco repeats and realleges each and every allegation in paragraphs 1

through 12 of this third-party complaint as though fully set forth at length herein.

14. In the event Cobble Hill recovers against the surety Safeco, then Safeco is entitled to judgment over against its principal, Cauldwell LLC, under common law (common law indemnity and equitable subrogation).

SECOND CLAIM AS AGAINST
ALL THIRD-PARTY DEFENDANTS

15. Safeco repeats and realleges each and every allegation in paragraphs 1 through 14 of this third-party complaint as though fully set forth at length herein.

16. The Indemnity Agreement provides, in relevant part, as follows:

“Indemnity to Surety: Undersigned agree to pay to Surety upon demand:

1. All loss, costs, and expenses of whatsoever kind and nature, including court costs, reasonable attorney fees... and any other losses, costs or expenses incurred by Surety by reason of having executed any Bond, or incurred by it on account of any Default under this Agreement...”

17. In the event that surety Safeco is liable to plaintiff Cobble Hill, then Safeco is entitled to judgment over against the third-party defendants, jointly and severally, based upon the Indemnity Agreement.

THIRD CLAIM AS AGAINST
ALL THIRD-PARTY DEFENDANTS

18. Safeco repeats and realleges each and every allegation in paragraphs 1 through 17 of this third-party complaint as though fully set forth at length herein.

19. Safeco is entitled to recover its attorneys’ fees incurred in defending against the Cobble Hill lawsuit from (1) Cauldwell LLC under common law, and (2) all third-party defendants pursuant to the Indemnity Agreement.

20. Further, Safeco is entitled to attorneys' fees incurred in prosecuting the instant claim against all third-party defendants pursuant to the Indemnity Agreement.

WHEREFORE, defendant Safeco Insurance Company of America respectfully demands that in the event judgment is entered in favor of plaintiff against Safeco, then Safeco is entitled to judgment over against third-party defendants Cauldwell Wingate Co., LLC, Cauldwell Wingate Co., Inc., Cauldwell Wingate Holding Company, Inc. and the Gregory Stahl Trust, jointly and severally, together with recovery of attorneys' fees and expenses incurred by Safeco in defending against the Cobble Hill action and in prosecuting the instant third-party complaint, and such other and further relief to which Safeco may be entitled.

Dated: Jericho, New York
November 2, 2010

TORRE, LENTZ, GAMELL,
GARY & RITTMASER, LLP
Attorneys for Defendant-Third-Party Plaintiff
Safeco Insurance Company of America

By: /s/Benjamin D. Lentz
Benjamin D. Lentz
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Jericho, New York 11753-2702
(516) 240-8900

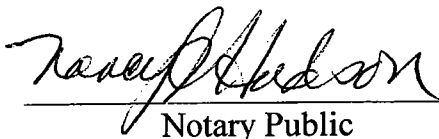
STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

Maria Cottis, being duly sworn, says: (1) I am not a party to this action, am over 18 years of age, and reside in Oceanside, New York; and (2) on November 2, 2010, I served the within **NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF SUMMONS AND THIRD-PARTY COMPLAINT** on each of the following attorneys (or parties) at the address set forth after said attorney's (or party's) name, that being the address designated by said attorney (or party) for that purpose, by depositing a true copy of same enclosed in postage-paid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York at 100 Jericho Quadrangle, Jericho, New York:

Marcus Rosenberg & Diamond LLP
Attorneys for Defendants
488 Madison Avenue
New York, NY 10022
(212) 755-8708


Maria Cottis

Sworn to before me this
2nd day of November, 2010


Notary Public

NANCY J. HUDSON
Notary Public, State of New York
No. 01HU6226266
Qualified in Nassau County
Commission Expires August 9, 2014

AO 398 (Rev. 01/09) Notice of a Lawsuit and Request to Waive Service of a Summons

UNITED STATES DISTRICT COURT

for the
Eastern District of New York

COBBLE HILL HEALTH CENTER, INC.

Plaintiff,

v.

SAFECO INSURANCE COMPANY OF AMERICA

Defendant, Third-Party Plaintiffs, *

Civil Action No. 10-CV-3834 (JBW) (CLP)

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

Cauldwell Wingate Company, LLC, Cauldwell Wingate Company, Inc., Cauldwell Wingate Holding Company, Inc. and

To: The Gregory Stahl Trust

*(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)***Why are you getting this?**

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days (*give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States*) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: _____

* v.

CAULDWELL WINGATE COMPANY, LLC,
CAULDWELL WINGATE COMPANY, INC.,
CAULDWELL WINGATE HOLDING COMPANY,
INC., and THE GREGORY STAHL TRUST,

Third-Party Defendants.

Signature of the attorney or unrepresented party

David Rosenberg, Esq.

Printed name

Marcus Rosenberg & Diamond LLP
488 Madison Avenue
New York, New York 10022

Address

dr@realtylaw.org

E-mail address

(212) 755-8708

Telephone number

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

COBBLE HILL HEALTH CENTER, INC.

Plaintiff,

-against-

SAFECO INSURANCE COMPANY OF AMERICA,

Defendant.

THIRD-PARTY COMPLAINT

TORRE, LENTZ, GAMELL, GARY & RITTMASER, LLP

Attorney(s) for Defendant

Office and Post Office Address, Telephone

100 JERICHO QUADRANGLE, SUITE 309

JERICHO, NEW YORK 11753-2702

Tel: (516) 240-8900

To: Esq.

Attorney(s) for

Service of a copy of the within

Dated, N.Y., is hereby admitted:
20

Attorney(s) for